

House Amendment 1642

PAG LIN

1 1 Amend the amendment, H=1150, to House File 712, as
1 2 follows:
1 3 #1. By striking page 1, line 4, through page 6,
1 4 line 16 and inserting the following:
1 5 <<Section 1. NEW SECTION. 714H.1 TITLE.
1 6 This chapter shall be known and may be cited as the
1 7 "Private Right of Action for Consumer Frauds Act".
1 8 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.
1 9 1. "Actual damages" means all compensatory damages
1 10 proximately caused by the prohibited practice or act
1 11 that are reasonably ascertainable in amount. "Actual
1 12 damages" does not include damages for bodily injury,
1 13 pain and suffering, mental distress, or loss of
1 14 consortium, loss of life, or loss of enjoyment of
1 15 life.
1 16 2. "Advertisement" means the same as defined in
1 17 section 714.16.
1 18 3. "Consumer" means a natural person or the
1 19 person's legal representative.
1 20 4. "Consumer merchandise" means merchandise
1 21 offered for sale or lease, or sold or leased,
1 22 primarily for personal, family, or household purposes.
1 23 5. "Deception" means an act or practice that is
1 24 likely to mislead a substantial number of consumers as
1 25 to a material fact or facts.
1 26 6. "Merchandise" means the same as defined in
1 27 section 714.16.
1 28 7. "Person" means the same as defined in section
1 29 714.16.
1 30 8. "Sale" means any sale or offer for sale of
1 31 consumer merchandise for cash or credit.
1 32 9. "Unfair practice" means the same as defined in
1 33 section 714.16.
1 34 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES
1 35 AND ACTS.
1 36 1. A person shall not engage in a practice or act
1 37 the person knows or reasonably should know is an
1 38 unfair practice, deception, fraud, false pretense, or
1 39 false promise, or the misrepresentation, concealment,
1 40 suppression, or omission of a material fact, with the
1 41 intent that others rely upon the unfair practice,
1 42 deception, fraud, false pretense, false promise,
1 43 misrepresentation, concealment, suppression, or
1 44 omission in connection with the advertisement, sale,
1 45 or lease of consumer merchandise, or the solicitation
1 46 of contributions for charitable purposes. For the
1 47 purposes of this chapter, a claimant alleging an
1 48 unfair practice, deception, fraud, false pretense,
1 49 false promise, or misrepresentation must prove that
1 50 the prohibited practice related to a material fact or
2 1 facts. "Solicitations of contributions for charitable
2 2 purposes" does not include solicitations made on
2 3 behalf of a political organization as defined in
2 4 section 13C.1, solicitations made on behalf of a
2 5 religious organization as defined in section 13C.1,
2 6 solicitations made on behalf of a state, regionally,
2 7 or nationally accredited college or university, or
2 8 solicitations made on behalf of a nonprofit foundation
2 9 benefiting a state, regionally, or nationally
2 10 accredited college or university subject to section
2 11 509(a)(1) or 509(a)(3) of the Internal Revenue Code of
2 12 1986.
2 13 2. A person shall not engage in any practice or
2 14 act that is in violation of any of the following:
2 15 a. Section 321.69.
2 16 b. Chapter 516D.
2 17 c. Section 516E.5, 516E.9, or 516E.10.
2 18 d. Chapter 555A.
2 19 e. Section 714.16, subsection 2, paragraphs "b"
2 20 through "n".
2 21 f. Chapter 714A.
2 22 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.
2 23 1. This chapter shall not apply to any of the
2 24 following:

2 25 a. Merchandise offered or provided by any of the
2 26 following persons, including business entities
2 27 organized under Title XII by those persons and the
2 28 officers, directors, employees, and agents of those
2 29 persons or business entities, pursuant to a profession
2 30 or business for which they are licensed or registered:
2 31 (1) Insurance companies subject to Title XIII.
2 32 (2) Attorneys licensed to practice law in this
2 33 state.
2 34 (3) Financial institutions which includes any bank
2 35 incorporated under the provisions of any state or
2 36 federal law, any savings and loan association or
2 37 savings bank incorporated under the provisions of any
2 38 state or federal law, and any credit union organized
2 39 under the provisions of any state or federal law, and
2 40 any affiliate or subsidiary of a bank, savings and
2 41 loan association, savings bank, or credit union.
2 42 (4) Persons or facilities licensed, certified, or
2 43 registered under chapters 135B, 135C, 135J, 148, 148A,
2 44 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,
2 45 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,
2 46 544A, or 544B.
2 47 b. Advertising by a retailer for a product, other
2 48 than a drug or other product claiming to have a
2 49 health-related benefit or use, if the advertising is
2 50 prepared by a supplier, unless the retailer
3 1 participated in the preparation of the advertisement
3 2 or knew or should have known that the advertisement
3 3 was deceptive, false, or misleading.
3 4 c. In connection with an advertisement that
3 5 violates this chapter, the newspaper, magazine,
3 6 publication, or other print media in which the
3 7 advertisement appears, including the publisher of the
3 8 newspaper, magazine, publication, or other print media
3 9 in which the advertisement appears, or the radio
3 10 station, television station, or other electronic media
3 11 which disseminates the advertisement, including an
3 12 employee, agent, or representative of the publisher,
3 13 newspaper, magazine, publication or other print media,
3 14 or the radio station, television station, or other
3 15 electronic media.
3 16 d. The provision of local exchange carrier
3 17 telephone service pursuant to a certificate issued
3 18 under section 476.29.
3 19 e. Public utilities as defined in section 476.1
3 20 that furnish gas by a piped distribution system or
3 21 electricity to the public for compensation.
3 22 f. Any advertisement that complies with the
3 23 statutes, rules, and regulations of the federal trade
3 24 commission.
3 25 g. Conduct that is required or permitted by the
3 26 orders or rules of, or a statute administered by, a
3 27 federal, state, or local governmental agency.
3 28 h. An affirmative act that violates this chapter
3 29 but is specifically required by other applicable law,
3 30 to the extent that the actor could not reasonably
3 31 avoid a violation of this chapter.
3 32 i. In any action relating to a charitable
3 33 solicitation, an individual who has engaged in the
3 34 charitable solicitation as an unpaid, uncompensated
3 35 volunteer and who does not receive monetary gain of
3 36 any sort from engaging in the solicitation.
3 37 j. The provision of cable television service or
3 38 video service pursuant to a franchise under section
3 39 364.2 or 477A.2.
3 40 k. A corporation holding one or more industrial
3 41 loan licenses pursuant to chapter 536A and employing
3 42 fewer than sixty full-time employees or a corporation
3 43 holding one or more regulated loan licenses pursuant
3 44 to chapter 536 and employing fewer than sixty
3 45 full-time employees. For purposes of this paragraph,
3 46 "corporation" means the same as defined in section
3 47 536A.2.
3 48 2. "Material fact" as used in this chapter does
3 49 not include repairs of damage to, adjustments on, or
3 50 replacements of parts with new parts of otherwise new
4 1 merchandise if the repairs, adjustments, or
4 2 replacements are made to achieve compliance with
4 3 factory specifications and are made before sale of the
4 4 merchandise at retail and the actual cost of any labor
4 5 and parts charged to or performed by a retailer for

4 6 any such repairs, adjustments, and parts does not
4 7 exceed three hundred dollars or ten percent of the
4 8 actual cost to a retailer including freight of the
4 9 merchandise, whichever is less, provided that the
4 10 seller posts in a conspicuous place notice that
4 11 repairs, adjustments, or replacements will be
4 12 disclosed upon request. The exclusion provided in
4 13 this subsection does not apply to the concealment,
4 14 suppression, or omission of a material fact if the
4 15 purchaser requests disclosure of any repair,
4 16 adjustment, or replacement.

4 17 Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF
4 18 ACTION.

4 19 1. A consumer who suffers an ascertainable loss of
4 20 money or property as the result of a prohibited
4 21 practice or act in violation of this chapter may bring
4 22 an action at law to recover actual damages. The court
4 23 may order such equitable relief as it deems necessary
4 24 to protect the public from further violations,
4 25 including temporary and permanent injunctive relief.

4 26 2. If the court finds that a person has violated
4 27 this chapter and the consumer is awarded actual
4 28 damages, the court shall award to the consumer the
4 29 costs of the action and to the consumer's attorney
4 30 reasonable fees. Reasonable attorney fees shall be
4 31 determined by the value of the time reasonably
4 32 expended by the attorney including but not limited to
4 33 consideration of the following factors:

- 4 34 a. The time and labor required.
- 4 35 b. The novelty and difficulty of the issues in the
4 36 case.
- 4 37 c. The skills required to perform the legal
4 38 services properly.
- 4 39 d. The preclusion of other employment by the
4 40 attorney due to the attorney's acceptance of the case.
- 4 41 e. The customary fee.
- 4 42 f. Whether the fee is fixed or contingent.
- 4 43 g. The time limitations imposed by the client or
4 44 the circumstances of the case.
- 4 45 h. The amount of money involved in the case and
4 46 the results obtained.
- 4 47 i. The experience, reputation, and ability of the
4 48 attorney.
- 4 49 j. The undesirability of the case.
- 4 50 k. The nature and length of the professional
5 1 relationship between the attorney and the client.

5 2 1. Attorney fee awards in similar cases.
5 3 3. In order to recover damages, a claim under this
5 4 section shall be proved by a preponderance of the
5 5 evidence.

5 6 4. If the finder of fact finds by a preponderance
5 7 of clear, convincing, and satisfactory evidence that a
5 8 prohibited practice or act in violation of this
5 9 chapter constitutes willful and wanton disregard for
5 10 the rights or safety of another, in addition to an
5 11 award of actual damages, statutory damages up to three
5 12 times the amount of actual damages may be awarded to a
5 13 prevailing consumer.

5 14 5. An action pursuant to this chapter must be
5 15 brought within two years of the occurrence of the last
5 16 event giving rise to the cause of action under this
5 17 chapter or within two years of the discovery of the
5 18 violation of this chapter by the person bringing the
5 19 action, whichever is later.

5 20 6. This section shall not affect a consumer's
5 21 right to seek relief under any other theory of law.

5 22 7. A person shall not be held liable in any action
5 23 brought under this section for a violation of this
5 24 chapter if the person shows by a preponderance of the
5 25 evidence that the violation was not intentional and
5 26 resulted from a bona fide error notwithstanding the
5 27 maintenance of procedures reasonably adopted to avoid
5 28 the error.

5 29 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
5 30 NOTIFICATION.

5 31 1. A party filing a petition, counterclaim,
5 32 cross-petition, or pleading, or any count thereof, in
5 33 intervention alleging a violation under this chapter,
5 34 within seven days following the date of filing such
5 35 pleading, shall provide a copy to the attorney general
5 36 and, within seven days following entry of any final

5 37 judgment in the action, shall provide a copy of the
5 38 judgment to the attorney general.

5 39 2. A party appealing to district court a small
5 40 claims order or judgment involving an issue raised
5 41 under this chapter, within seven days of providing
5 42 notice of the appeal, shall notify the attorney
5 43 general in writing and provide a copy of the pleading
5 44 raising the issue and a copy of the small claims court
5 45 order or judgment.

5 46 3. A party appealing an order or judgment
5 47 involving an issue raised under this chapter, within
5 48 seven days following the date such notice of appeal is
5 49 filed with the court, shall notify the attorney
5 50 general in writing and provide a copy of the pleading
6 1 raising the issue and a copy of the court order or
6 2 judgment being appealed.

6 3 4. Upon timely application to the court in which
6 4 an action involving an issue raised under this chapter
6 5 is pending, the attorney general may intervene as a
6 6 party at any time or may be heard at any time. The
6 7 attorney general's failure to intervene shall not
6 8 preclude the attorney general from bringing a separate
6 9 enforcement action.

6 10 5. All copies of pleadings, orders, judgments, and
6 11 notices required by this section to be sent to the
6 12 attorney general shall be sent by certified mail
6 13 unless the attorney general has previously been
6 14 provided such copies of pleadings, orders, judgments,
6 15 or notices in the same action by certified mail, in
6 16 which case subsequent mailings may be made by regular
6 17 mail. Failure to provide the required mailings to the
6 18 attorney general shall not be grounds for dismissal of
6 19 an action under this chapter, but shall be grounds for
6 20 a subsequent action by the attorney general to vacate
6 21 or modify the judgment.

6 22 Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS.

6 23 A class action lawsuit alleging a violation of this
6 24 chapter shall not be filed with a court unless it has
6 25 been approved by the attorney general. The attorney
6 26 general shall approve the filing of a class action
6 27 lawsuit alleging a violation of this chapter unless
6 28 the attorney general determines that the lawsuit is
6 29 frivolous. This section shall not affect the
6 30 requirements of any other law or of the Iowa rules of
6 31 civil procedure relating to class action lawsuits.

6 32 Sec. 8. NEW SECTION. 714H.8 SEVERABILITY CLAUSE.

6 33 If any provision of this chapter or its application
6 34 to any person or circumstances is held invalid, the
6 35 invalidity does not affect other provisions or
6 36 applications of this chapter that can be given effect
6 37 without the invalid provision or application, and to
6 38 this end the provisions of this chapter are severable.

6 39 Sec. 9. APPLICABILITY. This Act applies to causes
6 40 of actions accruing on or after the effective date of
6 41 this Act.>

6 42 #____. Title page, line 1, by striking the word
6 43 <cause> and inserting the following: <right>.

6 44 #____. Title page, line 2, by striking the word
6 45 <providing> and inserting the following:
6 46 <including>.>

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6 50 _____
HUSER of Polk

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SWAIM of Davis

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STRUYK of Pottawattamie

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PALMER of Mahaska

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R. OLSON of Polk

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